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MORTMAIN IN MEDIEVAL BOROUGHS

THE Middle Ages were replete with conflicts between church and state. Besides those of national importance, like the great struggles of the Emperor Henry IV. with Gregory VII. and Henry II. with Becket, which have evoked many learned disquisitions, there were frequent dissensions in the boroughs or cities of England and the Continent between clergy and laymen, to which historians have devoted little attention. These local conflicts are worthy of careful study, not only because they are concerned with questions of vital interest to the municipalities, but also because they exerted some influence upon national legislation and helped to prepare the way for the reformation of the church in the sixteenth century; for the fiscal and jurisdictional barriers of the church were assailed and broken down by the burgesses long before Luther assailed its doctrines.

Such conflicts were inevitable because the estate of a bishop or abbot within the town formed what was called in England a "soke", a privileged district with its own independent jurisdiction and its own laws or customs, a sort of state within the municipal state, a sanctuary from which the town bailiffs and tax-collectors were excluded; and within the walls of a town there might be several sokes of this sort.¹ Most frequently the dissensions between the rival authorities were caused by the sokemen's claim of exemption from the payment of burghal taxes and by their refusal to recognize the competence of the municipal courts over offences or cases in which they were concerned. The town authorities wished to assert

¹ Within the limits of the corporate authority of Canterbury there were still in 1835 about fifteen precincts exempted from its jurisdiction. *Municipal Corp. Com. Report*, 1835, p. 31.

their control or supremacy over all the inhabitants within the walls, sokemen as well as burghers, to make all submit to the municipal courts and bear their share of taxes and other burdensome obligations.

Sometimes the struggle between the contending parties was so fierce that the king interfered. For example, in 1272 in a brawl with the servants of the prior of Norwich some of the citizens were killed, and the city coroner caused a warrant to be issued for the arrest of some of the prior's men. Thereupon the prior excommunicated the citizens, and, not content with the use of spiritual arms, his followers assailed the citizens and killed several of them. The men of Norwich retaliated by despoiling and burning the principal priory buildings, and by slaying many of the monks. Soon afterwards the prior gathered a body of armed men, who slew many of the citizens; the bishop of Norwich placed the city under the interdict; and Henry III. came to Norwich with his judges, who sentenced thirty-four of the chief offenders to be put to death, and he seized the liberties of the city.¹ Philip Augustus intervened in like manner at Noyon in 1223. The civic magistrates had arrested a servant of the chapter of Notre-Dame, and the city was placed under the interdict. Thereupon a mob of citizens, with shouts of "Commune! Commune!", demolished the gates of the cathedral and wounded some of the church officers.²

Many other examples of such jurisdictional contests might be enumerated,³ but we are mainly concerned in this paper with an aspect of the subject regarding which information in the published sources is less abundant, namely, the attitude of the burgesses towards gifts or bequests of burgage lands to the clergy. Alienation of such lands in mortmain was regarded with disfavor by the burgesses mainly because the sokemen, the tenants of church estates in the towns, were usually exempt from taxes, and therefore grants of land to the church diminished the total amount of taxable property and tended to increase the tax-rate or to curtail the total municipal revenue. The question of the exemption of sokemen from the payment of tallages or direct taxes gave rise, however, to many bitter contests in the thirteenth, fourteenth, and fifteenth centuries. In 1402 the Commons complain that when tenths and fifteenths are levied the people of the church in cities and boroughs

¹ Blomefield, *Norfolk*, III. 53-58.

² Lefranc, *Histoire de Noyon*, 37-40.

³ Green, *Town Life*, I. 190-192, 317-383; Pauffin, *Essai sur l'Organisation et la Juridiction Municipales*, 204-282; Lavissee et Rambaud, *Hist. Générale*, II. 460-461, 464-466.

are unwilling to contribute their share;¹ and such opposition of the clergy to the demands of lay tax-collectors was supported by the canon law.² Sometimes the clergy were obliged to pay the taxes,³ but they often succeeded either in maintaining their right of exemption⁴ or in effecting a compromise by which only men or tenants of the church engaged in trade as merchants were tallaged.

Similar disputes arose regarding the payment of tolls or indirect taxes. The men of many boroughs and religious houses were exempted from tolls throughout the realm, and burgesses in their own town were either exempt or paid lower rates than others.⁶ Therefore we should not expect that conflicts regarding the clergy's claim of this immunity would arouse such bitter opposition as did their claim of freedom from tallage, which placed the clergy in a more privileged position than the burgesses. But dissensions regarding tolls were frequent, and in some cities, especially on the Continent, they evoked much bitter feeling, because the clergy competed with the citizens in the sale of wine and other wares.⁷ In the reigns of Henry III. and Edward I. the clergy of England claimed to be free from murage and other tolls.⁸ This claim was

¹ *Rot. Parl.*, III. 503.

² Löning, *Das Testament im Gebiet des Magdeburger Stadtrechtes* (1906), 128. The bull *Clericis Laicos*, 1296, applied to *rectores civitatum* as well as to princes. Wilkins, *Concilia*, II. 221.

³ *Historic Documents*, ed. Gilbert, 78-81, 360-361; Gilbert, *Cal. of Dublin Records*, I. 91, 133; *Abbreviatio Placitorum*, 212 (Grimsby); Hedges, *Wallingford*, II. 349; Morris, *Chester*, 134; *Cartul. S. Johannis de Colecestria*, ed. Moore, 506-508 (cf. *ibid.*, 28, 108); Blomefield, *Norfolk*, III. 47; Ryley, *Placita*, 259; Madox, *Firma Burgi*, 270-271; Zeumer, *Städteverfassung*, 81-82; Des Marez, *Etude sur la Propriété*, 175-178; von Maurer, *Städteverfassung*, II. 782-789, 863-868; Flammermont, *Hist. de Senlis*, 18, 142.

⁴ *Borough Customs*, ed. Bateson, II. 203; *Historic Documents* ed. Gilbert, 247; *Rot. Hundred.*, I. 203 (Canterbury); Duncumb, *Hereford*, I. 304; Madox, *Firma Burgi*, 270. For the Continent, see von Maurer, *Städteverfassung*, II. 789-790, 864-868; Lau, *Verf. der Stadt Köln*, 239; Reinicke, *Gesch. der Stadt Cambrai*, 214; Labande, *Hist. de Beauvais*, 104.

⁵ *Stanley v. Mayor of Norwich*, 6-10; Blomefield, *Norfolk*, III. 71; *Red Paper Book of Colchester*, ed. Benham, 42; Izacke, *Exeter* (1731), 12-13; *Cal. of Patent Rolls*, 1334-1338, pp. 15-19; Drake, *Eboracum*, 555; Madox, *Firma Burgi*, 271, 273; Gross, *Gild Merchant*, II. 140-141; *Rot. Lit. Claus.*, I. 345-346 (Bristol). For the Continent, see Keutgen, *Aemter und Zünfte*, 61-73; Espinas, *Les Finances de Douai*, 347-355; Lefranc, *Hist. de Noyon*, 137-140; Flammermont, *Hist. de Senlis*, 32-34.

⁶ Gross, *Gild Merchant*, I. 43-44; Green, *Town Life*, II. 50-53; Davies, *Southampton*, 227-230; von Maurer, *Städteverfassung*, I. 309-318.

⁷ Liebe, *Die Städte und die Kirche*, in *Neue Jahrb. für Klass. Alterthum*, 1901, VII. 216.

⁸ *Papers from Northern Registers*, ed. Raine, 72; Matthew Paris, *Chronica Majora*, ed. Luard, VI. 362. Cf. *Stanley v. Mayor of Norwich*, 8; Morris, *Chester*, 124.

sometimes successfully resisted in the boroughs.¹ Usually, however, it was allowed,² especially when the clergy or their tenants bought provisions for their own use, or sold their grain and other products of their lands; in short, when they did not buy and sell as professional traders.³

The town authorities soon perceived that to prevent loss through the exemption of church estates from taxation, the flow of gifts and bequests to the clergy must be checked. Accordingly on the Continent from the thirteenth century onward many municipal ordinances forbade all alienation of land or houses to the church.⁴ In some towns it was enacted that land acquired by the church should be alienated to burghers within a year, or if it remained in the hands of the clergy should be subject to municipal law and taxes.⁵ Another continental device to prevent loss by the *transformation des biens taillables en biens mainmortables* was the imposition of a heavy tax on property passing out of the hands of the burgesses.⁶ We even meet with laws prohibiting the donation to the clergy of movables beyond a certain amount, or forbidding burghers to enter the church or church fraternities, for fear that their property might pass into the dead hand of the clergy.⁷

In England prohibitions to alienate burgage land and tenements to religious houses are mentioned as early as the second half of the twelfth century, and they become quite common in the first half

¹ *Shillingford's Letters*, ed. Moore, 138; *Cardiff Records*, ed. Matthews, I. 11; Lau, *Köln*, 238-239.

² *Cartul. S. Johannis de Colecestria*, ed. Moore, 28; *Red Paper Book of Colchester*, ed. Benham, 39; *Cal. of Patent Rolls, 1334-1338*, pp. 15-19; Drake, *Eboracum*, 555; Duncumb, *Hereford*, I. 297; *Chartularies of St. Mary's Abbey, Dublin*, ed. Gilbert, I. 135, 396-397; Geering, *Handel und Industrie von Basel*, 154.

³ *Rot. Hund.*, I. 12, 356; *Cal. of Patent Rolls, 1391-1396*, pp. 423-425; Dugdale, *Monasticon*, IV. 314; Blomefield, *Norfolk*, III. 73; Merewether and Stephens, *Hist. of Boroughs*, I. 396-397; *Cardiff Records*, ed. Matthews, I. 11. See also Espinas, *Les Finances de Douai*, 355-358; Martin Saint-Léon, *Hist. des Corporations*, 138; Boos, *Städtekkultur*, I. 437. At Aachen in 1349 the clergy of St. Mary's church were granted the right to sell wine without paying toll, but at Worms the claim of the clergy to exercise this right was bitterly contested. See Höffer, *Verf. der Stadt Aachen*, 14; Boos, II. 212; Arnold, *Freistädte*, II. 20, 335-337, 430-440; cf. von Maurer, *Städteverf.*, II. 866.

⁴ Varges, in *Jahrbücher für Nationalökonomie*, ed. Conrad, 1895, LXIV. 518-520; Arnold, *Freistädte*, II. 177-178; Espinas, *Les Finances de Douai*, 348-355; Des Marez, *Étude sur la Propriété*, 160-161; Pertile, *Storia del Diritto Italiano*, IV. 386-395. The earliest prohibitions against mortmain in Germany seem to fall in the first quarter of the thirteenth century.

⁵ Liebe, in *Neue Jahrb. für Klass. Alterthum*, 1901, VII. 216; Varges, 519; Arnold, *Freistädte*, II. 177-178; Des Marez, *Étude*, 161-163.

⁶ Espinas, *Les Finances de Douai*, 223-226.

⁷ Von Below, *Städtewesen und Bürgerthum*, 112-113.

of the thirteenth.¹ Complaints were sometimes made by the burgesses regarding the extensive possessions in the grip of the dead hand. In 1275 the Hundred Rolls give the names of fifty-three religious houses having rents or tenements in the city and suburbs of Lincoln, the annual value of which amounted to about £196;² "these messuages used to be geldable, and liable for customs and services to the king and the city, but now they are withdrawn, to the great damage of the king and the city".³ In 1276 a jury asserts that the abbot of Osney has acquired in Oxford and its suburbs tenements which yield about £300 in annual rents; they were wont to be tallaged, but now all tallages are withdrawn, so that the burgesses have paid £46 13s. 4d., owing to the withdrawal of these and other tenements in the hands of religious houses. In like manner, the prior of St. Frideswide has acquired tenements yielding about 100 marcs, which are no longer subject to taxation, to the great loss of the burgesses.⁴ Many other entries in the Hundred Rolls show that much land in the boroughs had been alienated to the clergy, and that this was felt to be detrimental to the interests of the king and the burgesses through the loss of taxes, rents, and escheats.⁵

Similar complaints were made in the fourteenth century. In 1312 the citizens of London sent a letter to the king regarding the cost of the repairs of the city walls, in which they say that "whereas in justice they ought to be levied from all those who have rents and tenements and movables within the city, (they) commonly fall upon one part of the citizens only, and not upon persons of the religious

¹ See below, p. 739.

² This valuation includes the rents and tenements of the bishop and canons of Lincoln.

³ *Rot. Hund.*, I. 312-313, 316, 326. It is also affirmed (*ibid.*, I. 316) that these estates were wont to be tallaged with the citizens, but now it is claimed that they are free. One of the articles of inquiry on which the returns in the Hundred Rolls are based is: "De feodis militaribus cujuscumque feodi et terris aut tenementis datis vel venditis religiosis vel aliis in prejudicium regis et per quos et a quo tempore" (*ibid.*, I., introd., 14).

⁴ *Ibid.*, II. 36. Six other religious houses had real property in Oxford which yielded rents amounting to about £55.

⁵ *Ibid.*, I. 120, 131, 352, II. 1, 2, 79-80, 356-360, etc. At Cambridge, according to the Hundred Rolls, the canons of Barnwell in 1279 had about 390 acres of arable land. Maitland believes that this estimate is too low, and says that more than half the strips in the Cambridge fields went to religion (*Township and Borough*, 63, 159; cf. *ibid.*, 69, 149-158, 161). Gifts to religious houses in rural parts of England are also mentioned in the Hundred Rolls, II. 304-305, etc. The brethren of the Hospital of St. John of Jerusalem are accused of taking men under their protection in order to make them free of toll (*ibid.*, I. 83, 96, etc.). The complaints in the Hundred Rolls may have influenced the legislators who made the statute *De Viris Religiosis* in 1279.

orders and others who have franchises by charter and in almoign, to the amount indeed of the third part of the rental of the said city. And such persons are not willing to give any portion thereof or any aid or contribution or any assistance thereto, although they are saved just as much throughout the said city as the rest of the citizens."¹ In 1327 the mayor and commonalty of Canterbury tried to force the convent of Christ Church to contribute to the expenses of twelve knights for the king's service. The citizens say that the prior and convent have within the franchise £200 of rent and five acres of land, which were at all times contributory to the city; and they threaten to demolish their mills, to prevent any one from selling provisions to them, and to resort to various other measures of reprisal, if the monks persist in refusing to be taxed for the expenses of the twelve knights.² In 1331 a jury asserts that it would be to the damage of the king and the citizens of Norwich if he should allow three messuages in the city to be assigned to the convent of the Holy Trinity, because a great part of the city which is inhabited is in the hands of this convent and other religious houses, whereby the inhabitants (of the monastic lands) cannot be taxed to the tallages and aids of the king and the city, and they cannot serve on juries; therefore the citizens are burdened and grieved more than usual by such gifts, to the great detriment of the farm of the king and of the citizens.³ In 1394 Richard II. confirms an agreement made in 1262 by the bishop and the citizens of Hereford, allowing those who dwell in the city on the lands of the bishop and canons to buy and sell quit of toll, provided that they are not merchants (*excepta gente de advocaria*). In return for this concession the bishop, dean, and chapter agree that in the future they will not acquire any of the king's burgages in Hereford, but that they will be content with the lands and tenements which they had in the city before this agreement was made.⁴

The attitude of the burgesses toward the alienation of land in mortmain is clearly stated in the old laws and usages of Dublin

¹ Riley, *Memorials of London*, 98. William II. grants that the canons of St. Paul, London, shall hold the twenty-four hides which they have in or near the city of London (*juxta civitatem*) free of all gelds, and this charter was confirmed by Henry I. *Hist. MSS. Com.*, IX. 45, 60.

² *Literae Cant.*, ed. Sheppard, I. 212-221. Each of the malcontent citizens swore that he would have from the shrine of St. Thomas a gold ring for every finger of both hands.

³ *Stanley v. Mayor of Norwich*, 24-25. In a declaration of the old customs of Waterford, made in 1574, it is stated that a great part of the land in the city belongs to "the church and to inheritors not dwelling within the same". *Hist. MSS. Com.*, X. pt. v. 333.

⁴ *Cal. of Patent Rolls*, 1391-1396, p. 423.

and Waterford, which were set forth about the year 1300. Every citizen, it is here declared, may devise lands or rents within the bounds of the city to his heirs or friends, except to houses of religion and to persons unable to aid the city in time of need. No one shall give a rent of assize to a religious house, for if the rent is not paid within a certain period, the religious can get possession of the tenement, to the disherison of the heirs and of the city. If every citizen were to do this, the city might soon in large part pass into the hands of the clergy. For when religious houses enter upon property, they do nothing for the town (in payment of tallages and customs), the heirs are reduced to poverty, and the city is deprived of young men for its defence in time of war.¹ In 1224 the archbishop of Dublin agrees that his men who enjoy the liberties of the city shall be tallaged with the citizens, and that the latter are to have their court concerning lands which hereafter shall be bought, given, or bequeathed to the archbishop or to his clergy;² and a papal letter of 1261 complains that the ecclesiastical judge is impeded when he tries to compel the execution of wills of citizens who have bequeathed houses or burgages to any church or religious body.³

That the hostility of the burgesses and their lords to the alienation of land in mortmain was widespread in England and Ireland is evidenced by the following references to charters of liberties containing prohibitions of sales, gifts, or bequests to religious houses or to the clergy:

Agardsley, 1263: *English Hist. Rev.*, XVI. 334.

Altrincham, 1290: Ingham, *Altrincham*, 71, 73.

Bolton-le-Moors, 1253: *English Hist. Rev.*, XVII. 292-293.

Burton-on-Trent, 1273: *Archæol. Assoc. Journal*, VII. 424.

Cambridge, 1313: Cooper, *Cambridge*, I. 74.

Chard, 1230: *Cal. of Patent Rolls*, 1281-1292, p. 216.

Congleton, c. 1272: Ormerod, *Chester*, second ed., III. 36.

Haverfordwest, 1219-1231: *English Hist. Rev.*, XV. 518.

¹ *Historic Documents*, ed. Gilbert, 247, 262 (cf. *ibid.*, 261, 263); *Borough Customs*, ed. Bateson, II. 95, 202-203 (cf. *ibid.*, II. 101, 201-204).

² *Historic Documents*, ed. Gilbert, 81; Gilbert, *Cal. of Dublin Records*, I. 90-91. Cf. *ibid.*, I. 133; *Rot. Lit. Claus.*, I. 570; *Historic Documents*, 360-361.

³ *Chartæ Hiberniæ*, 30; *Historic Documents*, 173, 177. In 1197 John, earl of Mortain, grants to the canons of the church of St. Thomas, Dublin, all burgages that have been given to them or shall be given to them of which they have or shall have the charters of donors; and the canons are to have one burgage quit of all customs (tolls), tallages, and demands, except land-gavel and pleas of the crown. See *Chartæ Hiberniæ*, 8; *Cal. of Charter Rolls*, II. 387. In Dublin, Waterford, and Drogheda the Templars or Hospitallers were to have only one man or message quit of common customs (tolls). *Chartæ Hiberniæ*, 14; *Historic Documents*, 54, 133.

- Kells, c. 1210: *Chartæ Hiberniæ*, 16.
 Kilkenny, 1202-1210: *ibid.*, 34.
 Knutsford, c. 1292: Ormerod, *Chester*, second ed., I. 489.
 Leeds, 1208: Wardell, *Leeds*, app., p. iv.
 Leek, c. 1214: Sleigh, *Leek*, 16.
 Macclesfield, 1261: Earwaker, *East Cheshire*, II. 460.
 Newport (Monmouthshire), 1385: *Archæologia*, XLVIII. 440.
 Okehampton, before 1162: Bridges, *Okehampton*, new ed., 160.
 Pontefract, 1194: *Hist. MSS. Com.*, VIII. 269.
 Salford, c. 1230: Tait, *Manchester*, 67.
 Scarborough, 1253: *Cal. of Charter Rolls*, I. 417.
 Shrewsbury, 1205: *Rotuli Chartarum*, 142.
 Stockport, c. 1260: Tait, *Manchester*, 66-67.
 Thomastown, c. 1210: *Borough Customs*, ed. Bateson, II. 93.
 Warton, 1246-1271: *English Hist. Rev.*, XVII. 294.
 Wells, 1174-1180: *Archæologia*, L. 351; cf. *ibid.*, LI. 103.
 Wexford, 1317: *Chartæ Hiberniæ*, 47.

In most of these charters the burgesses are granted power "to give, sell, and pledge" or "to give, sell, and bequeath" their lands, houses, or burgages¹ except to monks (*exceptis viris religiosis* or *exceptis domibus religiosis* or *nisi in religionem* or *nisi religioni*). In the charters of Agardsley, Bolton, Burton, Chard, and Stockport the Jews are also excepted. At Warton the exception covers "religious men, clerics, and Jews"; at Chard, "religious houses or churches".² At Cambridge and Newport the burgesses are allowed to bequeath lands and tenements except "in mortmain". At Chard and Wells burgages could be alienated to the monks with the consent of the lord of the town (the bishop of Bath and Wells); at Scarborough, with the consent of "the community" of the borough. The charter granted to Shrewsbury contains a direct prohibition: "quod nullus burgensis aliquod tenementum det domui religiose ad detrimentum servicii nostri". This and the grants to Cambridge and Scarborough are the only royal charters in our list;³ the others were granted by barons or prelates.⁴

The information contained in these charters is supplemented by

¹ Rents are also mentioned in the grants of Chard, Newport and Scarborough.

² The "chief lord" of the fief is also excepted in the charters of Knutsford and Stockport.

³ The king was less liable to sustain loss through gifts in mortmain than other lords, because most of the royal boroughs had *firma burgi*.

⁴ The grants of Chard and Wells were made by the bishop of Bath and Wells; that of Burton by an abbot; the other charters in the list emanate from baronial lords. The charter of Burton bestows power of alienation "*exceptis omnibus viris religiosis aliis a domo nostra de Burthor*".

some passages in borough customals,¹ and by a clause found in grants of land allowing the same to pass to the grantee's heirs or assigns, excepting men of religion or religious houses.²

This anti-clerical movement in the boroughs is of some importance for national as well as local history, especially as regards its relations to the Statute of Mortmain (1279). This statute forbade any monk or other person (*religiosus aut alius*) to buy and sell or receive any lands or tenements whereby they may come into mortmain. The statute intimates that the earlier laws on this subject had been ineffective. The Charter of Liberties of 1217, ch. 43, had provided that no one was to give land to a religious house resuming it to be held of that house, and the Provisions of Westminster (1259), ch. 14, had enacted that religious men were not to enter the fee of any one without the licence of the chief lord from whom the property was held.³ The statute of 1279 seems to apply to the secular clergy as well as to the monks, and was so applied by Edward I. and his successors;⁴ but the contemporary chroniclers speak of it as though its application was limited to the monks,⁵ and the *Articuli Cleri*, issued between 1279 and 1285, request that it should not apply to the secular clergy.⁶ The movement in the

¹ Besides the restrictions on alienation in the customals of Dublin and Waterford (above, page 738), see those in the customals of Godmanchester, 1324, Scarborough, 1348, and Hereford, 1348. *Borough Customs*, ed. Bateson, II. 97, 201; *Municipal Corp. Com. Report*, 1835, p. 2838. In 1298 a jury declares that, according to the custom of Scarborough, every tenant may, on his death-bed, devise his tenements to whomsoever he will, except to religious men. *Yorkshire Inquisitions*, ed. Brown, III. 93; cf. *ibid.*, I. 220.

² London, 1181-1222, *Hist. MSS. Com.*, IX. 1, 50; Grimsby, Hen. III., *Rot. Hund.*, I. 291; Bath, 1250-1260, King and Watts, *Records of Bath*, app., p. xvii; Canterbury, 1269, *Cal. of Charter Rolls*, II. 123; Lynn, c. 1271, Parkin, *Freebridge Hundred*, 125; Nottingham, a lease, Edw. I., *Records of Nottingham*, ed. Stevenson, I. 364; Dublin, 1284, 1290, Gilbert, *Cal. of Dublin Records*, I. 103, 106; Rye, Wycombe, and Dartmouth, Edw. I., *Hist. MSS. Com.*, V. 505, 559, 599-601, 606. This restrictive clause also appears in some manorial grants of arable land. *Ibid.*, XV. pt. x. 131, and *MSS. of Duke of Rutland*, IV. 70; Roper, *Church of Lancaster*, 395; *Yorkshire Inquisitions*, ed. Brown, II. 91. Some of these burghal and manorial deeds also forbid alienation to Jews. Cf. Bracton, f. 13, ed. Twiss, I. 104.

³ Stubbs, *Select Charters*, 347, 404, 458; cf. *Close Rolls*, 1227-1231, p. 88. In 1258, at the Parliament of Oxford, the barons prayed remedy that men of religion may not enter the fees of earls, barons, and others without their will, whereby they lose forever their wardships, marriages, reliefs, and escheats. Stubbs, *Select Charters*, 383. The Statute of Marlborough, 1267, re-enacted the Provisions of 1259, but omitted ch. 14.

⁴ *List of Inquisitions ad Quod Damnum* (Public Record Office, Lists and Indexes, No. 17). The statute *Quia Emptores*, 1290, repeats the prohibition of 1279 without limiting it to the religious. See also Fleta, bk. III., ch. v; Statute of Westminster II., ch. 32. Even the enactment of 1217 was applied to "any ecclesiastical persons" *Close Rolls*, 1227-1231, p. 88.

⁵ *Annales Monastici*, ed. Luard, II. 392, III. 282, IV. 282, 479; Cotton, *Historia Anglicana*, ed. Luard, 158; *Flores Hist.*, ed. Luard, III. 53.

⁶ *Papers from Northern Registers*, ed. Raine, 78; "ubi dicitur manum mortuam ibi oportet suppleri scilicet predictorum religiosorum."

towns was directed primarily against the monks; the seculars are rarely mentioned in the prohibitions against alienations in mortmain.¹ Already in the time of Edward I. it became customary, however, to petition the king for licence to alienate real property either to regulars or to seculars, and permission was freely granted in return for the payment of a "fine"² But some of the boroughs claimed the right to substitute the licence of the town authorities for that of the king.³

Finally, attention should be called to the fact that the prohibitions in the boroughs against the acquisition of real property by religious houses preceded national legislation on the same subject. We find such prohibitions in the boroughs long before 1217, and many examples of the more stringent legislation of 1279 are found in town charters during the century preceding Edward I.'s statute.⁴ Though this statute seems to have been passed mainly to safeguard the lords from the loss of their escheats and services, a precedent for such legislation existed in the boroughs and may have exerted some influence on the minds of the law-makers in 1279, just as in Germany the municipal prohibitions of grants in mortmain were copied by the territorial princes.⁵ Because "the living hand was lively"⁶ in the boroughs, the pressure of the dead hand was felt there earlier than elsewhere; and agitation to relieve this pressure began in the portmote earlier than in parliament.

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¹ See above, p. 740 (especially the charters of Chard and Warton), and *Hist. MSS. Com.*, IX. 1. The customal of Godmancheser, 1324, mentions "priests, religious men, or any foreigner"; at Hereford, 1348, tenements may be bequeathed "preter in manum mortuam" *Borough Customs*, ed. Bateson, II. 97; *Municipal Corp. Com. Report*, 1835, p. 2838. Some grants of land made by the clergy to laymen contain the restriction that it is not to pass to any religious house. *Hist. MSS. Com.*, IX. 50; Parkin, *Freebridge Hundred*, 125. In 1269 the citizens of Canterbury gave land to Thomas of Sandwich, cleric, to be held by him and his assigns "not being religious houses". *Cal. of Charter Rolls*, II. 123.

² See *List of Inquisitions ad Quod Damnum; Year Book 32-33 Edw. I.*, ed. Horwood, 499. For the power of the king to grant licence, see also Britton, ed. Nichols, I. 227; Fleta, bk. III., ch. v.; *Statutes of the Realm* (1810), I. 111, 131, 302.

³ This right was claimed by Scarborough, Winchelsea, Rye, and Hastings. *Borough Customs*, ed. Bateson, II. 201-202; Lyon, *Dover*, II. 355, 375; Holloway, *Rye*, 146. A royal grant of 1327 allows the citizens of London to bequeath their tenements in mortmain; Lincoln and Bristol also claimed to have this custom. *Historical Charters of London*, 53-54; Madox, *Firma Burgi*, 23; *Borough Customs*, ed. Bateson, II. 202; *Ricart's Kalendar*, ed. Smith, 97. For alienations in mortmain with the consent of the town council, on the Continent, see Löning, *Das Testament im Gebiet des Magdeburger Stadtrechtes*, 125-127.

⁴ See the list of charters, above, p. 739.

⁵ Arnold, *Freistädte*, II. 178; von Maurer, *Städteverf.*, I. 400.

⁶ Maitland, *Township and Borough*, 63.